

## CITY COUNCIL MEETING

MUNICIPAL COMPLEX  
DATE: MONDAY, SEPTEMBER 16, 2013

PORTSMOUTH, NH  
TIME: 6:00 PM [or thereafter]

At 6:00 p.m., a Work Session was held regarding Transportation Policy Issues.

### **I. CALL TO ORDER [7:00PM or thereafter]**

Mayor Spear called the meeting to order at 7:10 p.m.

### **II. ROLL CALL**

Present: Mayor Spear, Assistant Mayor Lister, Councilors Kennedy, Novelline Clayburgh, Lown, Dwyer, Smith and Thorsen

Absent: Councilor Coviello

### **III. INVOCATION**

Mayor Spear asked everyone to join in a moment of Silent Prayer in remembrance of the victims of the Navy Yard shooting in Virginia.

### **IV. PLEDGE OF ALLEGIANCE**

Councilor Smith led the Pledge of Allegiance to the Flag.

### **V. ACCEPTANCE OF MINUTES – *There were no minutes on for acceptance.***

### **VI. PUBLIC COMMENT SESSION**

Tom Carroll read a statement regarding the scrap metal operations at the Port and specified the information he is looking for in his Right to Know request from the City Manager.

Mayor Spear asked Mr. Carroll to state his residence address for the record. Mr. Carroll stated his place of business is at 500 Market Street but he is a resident of Dover, NH.

Gibson Kennedy – spoke in favor of the proposed Portsmouth Urban Forestry Ordinance on the agenda in first reading stating that the value of trees cannot be overstated. He also addressed an issue in the neighborhood of Suzanne Drive with the roots of the trees lifting the sidewalk making it difficult for some residents to navigate. He asked that the Public Works Department investigate.

Adam Kelley – formerly lived in Portsmouth and is currently a resident of Dover. He spoke regarding issues he had with Beechstone Apartment management and he feels that although the City staff initially tried to help him, he feels that not enough was done on his behalf and he was evicted.

### **VII. APPROVAL OF GRANTS/DONATIONS**

*(There were no items on this section of the agenda)*

## VIII. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

- A. First reading of Proposed Ordinance amending Chapter 8, Article III, "Street Trees," is hereby deleted in its entirety and replaced with the following amendment to Chapter 1 Article IV by creating a Trees & Public Greenery Committee and the adoption of a new Article III entitled Portsmouth Urban Forestry Ordinance of Chapter 8.

**Councilor Novelline Clayburgh moved to pass first reading and schedule a public hearing and second reading on the proposed Ordinance, as presented, at the October 7, 2013 City Council meeting, seconded by Councilor Kennedy.**

Councilor Kennedy stated she has gotten some calls regarding this ordinance. She asked for clarification that City trees are included in the ordinance. City Manager Bohenko stated yes. Councilor Kennedy then asked if an arborist can be named as the tree warden instead of not having a plan to appoint a tree warden. City Manager Bohenko stated that the Trees and Greenery Blue Ribbon Committee has been working on this for 2 years and have worked through multiple drafts. He explained that the Tree Warden will work in conjunction with the Trees and Public Greenery Committee at their direction. He stated that trees cannot be taken down without going through the process and there will be a person on staff who will coordinate the actions of the committee. He stated that the Public Works Director will be the first appointee as the Tree Warden and he hopes that an arborist will be brought on staff in the future who will then be appointed Tree Warden.

City Attorney Sullivan confirmed that the ordinance is currently written that the Tree Warden is required to be a member of the staff.

Assistant Mayor Lister stated that one of the issues currently going on is that there is a neighborhood meeting being held right now that is regarding a business that is looking to come in and it will include cutting down trees. He stated that the business is being proactive by including the neighborhood early on in the process, but it has heightened the issue of trees.

Councilor Thorsen stated he has questions in several areas of the ordinance and asked how the ordinance will be enforced. City Attorney Sullivan stated that will be a function of the Tree Warden. Councilor Thorsen continued stating that the Urban Forest expansion reference sounds like a policy decision and wonders if it should be embedded in the ordinance or be separate. City Attorney Sullivan stated that it is meant as a suggestion for the Council to adopt. Councilor Thorsen then asked about page 5, right of ways, and the portions of private property that are used by the City. He also wondered about the height of trees on private property and if they fall and land on City property or other private property. City Attorney Sullivan stated that the City has some authority on right-of-ways but the ordinance is meant to address trees, shrubbery and bushes that impact site lines of traffic, etc. Councilor Thorsen asked if that is then an eminent domain situation. City Attorney Sullivan stated that several times a year there are complaints about this type of situation usually on corner lots and that they request the owners to cut them back and usually they take care of it quickly because it is their liability.

Councilor Smith asked about trees on private property that get diseases that can then affect trees on neighboring properties and is this ordinance able to mediate that type of situation.

City Attorney Sullivan explained that we have no direct authority but we can attempt to help mediate situations. He stated that the only instance that the city is involved in private property trees directly is through the site plan process.

Councilor Dwyer stated that this needs to be clarified because the issue of trees and landscaping before the Planning Board is complicated. She stated she would like the Trees and Public Greenery Committee to be involved in the site plan process. The City Manager stated that they are already included in the process.

City Manager Bohenko clarified that the Chairman of the committee Peter Loughlin will be in attendance at the October 7<sup>th</sup> Council meeting to address any questions.

Councilor Thorsen asked about the fines and who decides how much the fine will be and under what criteria. City Attorney Sullivan stated that the Court judge would impose the fine upon conviction but stated that these would be extreme cases that would go to Court as most situations are handled administratively.

**Motion voted.**

- B. First reading of Proposed Ordinance amending Chapter 7, Article II, Section 7.222 – Maximum Number of Taxicabs amended to increase the number of medallions from twenty-five (25) to twenty-eight (28)

**Councilor Lown moved to pass first reading and schedule a public hearing and second reading on the proposed Ordinance, as presented, at the October 7, 2013 City Council meeting, seconded by Assistant Mayor Lister.**

Councilor Thorsen stated he previously had questions that were going to be addressed by the City Attorney. City Attorney Sullivan stated that the Taxi Commission met for several hours this morning and these issues were discussed with many different positions and opinions and no consensus reached. He stated the Chairman of the Taxi Commission will be in attendance at the October 7<sup>th</sup> meeting to address any questions.

Councilor Smith asked if the issue of the current medallions has been settled. City Attorney Sullivan stated that all medallions are accounted for and currently issued with the exception of the one medallion that is set aside for a handicap taxi which has not been used in several years. Councilor Smith asked if all of the taxis with medallions are on duty at all times. City Attorney Sullivan stated no, they are only out when they feel they will make money.

**Motion voted.**

- C. First reading of Proposed Ordinance amending Chapter 7, Article X, Section 7.1000 E – Towing – Tow Zones – Limited Parking Areas: City Streets – be amended that any vehicle or object remaining in the same location in any uncontrolled on-street parking space for more than 24 hours in the Central Business Districts A and B as bounded and shown on the City of Portsmouth Zoning Map, or more than 72 hours in any other location in the City, may be removed in the manner provided in Section 7.1000 D

**Assistant Mayor Lister moved to pass first reading and schedule a public hearing and second reading on the proposed Ordinance, as presented, at the October 7, 2013 City Council meeting. Seconded by Councilor Smith and voted.**

- D. Third and final reading of Proposed Ordinance amending Chapter 10 – Zoning Ordinance, Article 5 – Dimensional and Intensity Standards, are hereby Amended as follows:
- Section 10.531 – Table of Dimensional Standards – Business and Industrial Districts, Maximum Structure Dimensions – Structure Height, CBA 45’ or 3 ½ Stories, which ever is less; CBB 45’ or 3 ½ Stories, which ever is less;
  - Section 10.535 – Exception to Dimensional Standards in the Central Business Districts, by Inserting a New Section 10.535.13: Increased Building Height by Conditional Use Permit
  - Section 10.1530 – Terms of General Applicability, add new Terms and Definitions

**Councilor Kennedy moved to pass third and final reading on the proposed Ordinance, as presented. Seconded by Assistant Mayor Lister and voted.**

- E. Third and final reading of Proposed Ordinance amending various sections of Chapter 7, Vehicles, Traffic Parking Omnibus Ordinance
- Amend: Chapter 7, Article VI – Truck Loading/Unloading Zones, Section 7.601 Truck Loading/Unloading Zones Established
  - Amend: Chapter 7, Article VI – Truck Loading/Unloading Zones, Section 7.602 Truck Loading/Unloading Zones (24 Hours)
  - Amend: Chapter 7, Article II – Taxicabs, Section 7.224 Taxicab Stands
  - Add: Chapter 7, Article III, Section 7.328 Utilization Of Multiple Parking Spaces
  - Amend: Chapter 7, Article IV: Section 7a.408 Taxicab Stands Designated
  - Add: Chapter 7, Article III, Limited Parking – Three Hours: Section 7.328: Limited Parking – Three Hours
  - Amend: Chapter 7, Article IV, Off-Street Parking Areas
  - Amend: Chapter 7, Article III, Traffic Ordinance, Limited Time Parking, Section 7.327: Limited Parking – Two Hours
  - Amend: Chapter 7, Article IVA, Bus Stops, Taxicab Stands And Horse Drawn Carriage And Article IV, Off-Street Parking Areas

- Amend: Chapter 7, Article IV, Off-Street Parking Areas
- Amend: Chapter 7, Article IX, Penalties, Forfeitures And Separability, Section 7.901: Penalties
- Amend: Chapter 7, Article III, Traffic Ordinance, Section 7.321: Snow Emergency Parking Ban
- Amend: Chapter 7, Article III, Traffic Ordinance, Section 7.326: Limited Parking – Fifteen Minutes
- Amend: Chapter 7, Article IV, Off-Street Parking Areas, Section 7.401, Definitions

**Councilor Novelline moved to pass third and final reading on the proposed Ordinance, as presented, seconded by Councilor Smith.**

Councilor Kennedy stated she had previously asked about the spaces gained or lost by this ordinance. Parking Division Manager Nelson stated there are 2 paid parking spaces lost.

**Motion voted.**

#### **IX. CONSENT AGENDA**

**Councilor Lown moved to adopt the Consent Agenda as presented. Seconded by Assistant Mayor Lister and voted.**

- A. Request for Approval of Pole License to install 6 poles associated with the Maplewood Avenue By-Pass Bridge project. These poles are located on Maplewood Avenue and Cutts Street (***Anticipated action – move to approve the aforementioned Pole License Agreement as recommended by the Public Works Department with the approval conditioned upon amendment of the license to allow for the collection of any lawfully assessed real estate taxes***)
- B. Request for Approval of Pole License to install 1 pole located on Aldrich Road (***Anticipated action – move to approve the aforementioned Pole License Agreement as recommended by the Public Works Department with the approval conditioned upon amendment of the license to allow for the collection of any lawfully assessed real estate taxes***)
- C. Letter from Zhana Morris, The Music Hall requesting parking meter permit for the Music Hall's 2013-2014 Season (***Anticipated action – move to refer to the City Manager with power***)

- D. Letter from David Topham, Granite State Wheelmen, Inc. requesting permission to conduct 40<sup>th</sup> annual Tri-State Seacoast Century bicycle ride on September 21 and 22, 2013 (***Anticipated action – move to refer to the City Manager with power***)

**X. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS**

- A. Letter from Eric Chinburg, Sandy Brook Corporation, requesting that Laurel Court be accepted as a public way

**Councilor Smith moved to accept Laurel Court as a public way on the condition that Sandy Brook Corporation provides a payment of \$15,000 to the City in lieu of constructing the required off-site water line. Seconded by Assistant Mayor Lister and voted.**

**XI. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS**

**A. CITY MANAGER**

*There were no action items.*

**Informational Items**

1. Events Listing
2. Update on Local Government Center Health/Dental Insurance Reimbursement

**B. MAYOR SPEAR**

1. Appointment to be Considered:
  - Ronald Zolla – Reappointment to the Economic Development Commission

The appointment of Ronald Zolla to the Economic Development Commission was considered and will be voted at the October 7, 2013 City Council meeting.

2. Appointments to be Voted:
  - Elizabeth A. Moreau to the Planning Board as a regular member
  - T. Stephen McCarthy – Reappointment to the Building Code Board of Appeals

**Assistant Mayor Lister moved to appoint Elizabeth A. Moreau to the Planning Board as a regular member (current alternate) to fill the unexpired term of Anthony Blenkinsop until December 31, 2015 and reappoint T. Stephen McCarthy to the Building Code Board of Appeals until July 1, 2018. Seconded by Councilor Lown and voted.**

3. Resignation – Karina Quintans from the Planning Board effective October 1, 2013

**Councilor Smith moved to accept with regret the resignation of Karina Quintans from the Planning Board effective October 1, 2013. Councilor Smith requested that a letter of thanks be sent to Ms. Quintans for her service to the City. Seconded by Councilor Novelline Clayburgh and voted.**

#### **C. ASSISTANT MAYOR LISTER**

1. Update on Senior Committee

Assistant Mayor Lister stated the committee has been meeting every other Monday and have an aggressive calendar to accomplish the goals that were set. He stated the members are open-minded and creative and are looking at various options for providing quality services for all senior citizens and others. He stated they recently visited the Doble Center as part of their directive to identify a site for a senior center.

Councilor Kennedy asked what the timeline is for reporting back. Assistant Mayor Lister stated they are bringing a report back in early December with recommendations. He stated the goal is to identify a site for the senior center and to identify resources to fund it including the proceeds from the sale of the Connie Bean Center.

#### **D. COUNCILOR NOVELLINE CLAYBURGH**

1. Proposal in accordance with RSA 261-153, Paragraph VI. (a) to collect an optional \$5.00 fee for the motor vehicle improvement fund (See attached statute)

**Councilor Novelline Clayburgh moved to refer to the Fee Committee for report back, seconded by Councilor Kennedy.**

Councilor Novelline Clayburgh explained that this was suggested by a citizen recently and she was unaware that this provision existed. She stated she would like to designate these fees to be used for the shuttle and parking program.

Councilor Dwyer asked if we typically designate the disposition of fees or do they go to the general fund. City Manager Bohenko stated the Fee Committee does review the fee schedule as part of the budget process. He further explained that per the statute a fund could be set up specifically for this fee.

Councilor Kennedy asked if this could be a voluntary fee and not mandated as is done in several instances at the State level. City Attorney Sullivan stated there would not be any legal objection.

Councilor Novelline Clayburgh stated that there is an ongoing discussion on how to raise funds and although she has been told that this would be a drop in the bucket at \$105,000.00 a year, it is still something.

Councilor Dwyer agreed that this is a drop in the bucket and if this goes forward, it needs to be clear that other funds will still be needed to implement the pilot shuttle program discussed during the work session.

Assistant Mayor Lister stated this should go forward to the Fee Committee as one of many strategies.

**Motion voted.**

## **XII. MISCELLANEOUS/UNFINISHED BUSINESS**

Councilor Kennedy stated it has been brought to her attention that the Coalition is now down to only 3 communities, with Portsmouth being one. She stated she would like to know when we will decide if this is not longer beneficial to the City of Portsmouth and also walk away. She would like information provided on this issue.

Councilor Smith asked the City Manager to address the comments made by Mr. Kelley during the public comment session. City Manager Bohenko stated he will review this issue with the Deputy City Manager and report back to the Council.

Councilor Smith then asked the City Manager to address Mr. Carroll's public comment session comments as well. City Manager Bohenko explained that he feels that the Right to Know law is being misunderstood and that the City provides information as it exists to Mr. Carroll as requested, but that he is requesting the City to create a report which isn't the correct use of the law. He stated if the Council wishes him to create such a report, then he will do so, but feels that this is opening a can of worms to go above being in compliance with the Right to Know law. He stated the Port Authority staff has been very cooperative as well and have implemented best management practices as requested.

Mayor Spear stated that the EPA and DES are already monitoring the situation and the City staff is also keeping track of the activity as well and investigate every complaint filed by Mr. Carroll. He stated the final DES air quality report will be done in a couple of months.

## **XIII. ADJOURNMENT [AT 10:00PM OR EARLIER]**

**Councilor Kennedy moved to adjourn at 8:05 p.m. Seconded and voted unanimously.**



Valerie A. French  
Deputy City Clerk